SUPREME COURT OF THE UNITED STATES.

No. 1527.

THE STEAM VESSEL "MOSES TAYLOR," PLAINTIFF IN ERROR,

vs.

WILSON HAMMONS.

IN ERROR TO THE COUNTY COURT OF THE CITY AND COUNTY OF SAN FRANCISCO.

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1 UNITED STATES OF AMERICA, ss:

The President of the United State of America to the judge of the county court of the city and county of San Francisco, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said county court of the said city and county of San Francisco, before you, between Wilson Hammons and the steamer Moses Taylor, manifest error hath happened, to the great damage of the said the steamer Moses Taylor, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, the first day of February, in the year of our Lord eighteen hundred and sixty-four, and of the independence of the United States the eighty-eighth.

Attest my hand and the seal of the circuit court of the United States for the northern district of California, this 5th day of April, A. D. 1864.

HENRY C. HYDE,
Clerk Circuit Court U. S. North. Dist. Cal'a.

1½ To the justices of the Supreme Court of the United States:

The return to this writ appears by the schedule thereto annexed.

The answer of the judge of the county court of the city and county of San Francisco, State of California.

[SEAL.]

WM. LOEWY,
County Clerk and ex officio Clerk of the County Court of the City and County of San Francisco, State of California.

Filed April 6, 1864.

W. HARNEY, *Deputy County Clerk.*

2 *Docket.*

STATE OF CALIFORNIA:

In the justice's court of the sixth township in and for the city and county of San Francisco.

WILSON HAMMONS, plaintiff,
vs.
THE STEAM VESSEL MOSES TAYLOR, defendant.

Complaint filed November 12th, 1863, claiming to recover of the defendant the sum of two hundred dollars for non-performance of contract, as per said complaint.

Summons issued November 12th, 1863; returnable November 16th, 1863, at 2 o'clock p. m. Summons returned, legally served on the defendant, November 13th, 1863, by J. S. Lamb, constable.

NOVEMBER 16*th*, 1863.

Case continued to November 19th, 1863, at 1 o'clock p. m., by stipulation of parties.

NOVEMBER 19*th*, 1863.

Case called at 1 o'clock p. m. Plaintiff by Van Arman, Lane & How. Defendant by Delos Lake in court.

Defendant files an answer to the complaint.

John Mulligan, Wm. Harding and A. N. Starling, sworn and examined as witnesses for pl'ff. Plaintiff rests.

Case closed and submitted. Whereupon, on the 21st day of November, 1863, this court renders judgment in favor of the plaintiff and against the defendant for the sum of two hundred dollars damages and costs of action.

Justice's fees, $5 00; constable's fees, $1 75.

2½ Notice of appeal and appeal bond filed by defendant December 3d, 1863.

I hereby certify the foregoing to be a true and correct transcript of my docket of the above-entitled cause, and the papers hereunto attached are all that have been filed with said action.

MARTIN W. LAMB,
Justice of the Peace, sixth township.

3 *Complaint.*

In justice's court, sixth township of city and county of San Francisco and State of California.

WILSON HAMMONS
vs.
THE STEAM VESSEL MOSES TAYLOR.

And now comes the above-named plaintiff and complains against the steam vessel Moses Taylor, and for cause of action alleges as follows:

That said Moses Taylor is a steam vessel of over 1,000 tons burthen, and is used in navigating the waters of the Pacific Ocean and as a carrier of freight and passengers.

That Marshall O. Roberts is, and was at the time hereinafter mentioned, one of the owners and the agent of said vessel.

That heretofore, to wit, on the first day of October, A. D. 1863, this plaintiff entered into a contract with the said Marshall O. Roberts, as agent and owner, whereby the said Marshall O. Roberts agreed to carry said plaintiff from the city of New York to San Francisco, California, as a steerage passenger, with all reasonable despatch and speed, to furnish the said plaintiff with proper and necessary food, water, and berths, or other conveniences for lodging while on said voyage between the places aforesaid.

That in consideration thereof the said plaintiff, on his part, agreed to, and did, at the time last aforesaid, pay the said Marshall O. Roberts, owner and agent as aforesaid, the sum of one hundred dollars.

4 That pursuant to said contract, the said plaintiff took passage at said city of New York, on board of the steamer Illinois, on the day last aforesaid, and was landed at Aspinwall, in Central America, was conveyed across the Isthmus of Panama on the Panama Railroad to Panama, and from Panama to San Francisco on the defendant Moses Taylor, and arriving at the place last aforesaid on or about the eighth day of November, A. D. 1863.

Yet the said Marshall O. Roberts did not perform, on his part, the said contract; but, on the contrary, failed to carry, or cause to be carried or conveyed, the said plaintiff with reasonable dispatch from New York to San

Francisco, and also failed to furnish to said plaintiff proper and suitable food or water or proper and necessary berths or conveniences for lodging while on said vesssl, but the said plaintiff was in fact detained on said passage on the Isthmus of Panama for a long time, to wit, for the period of eight days.

In consequence whereof the said plaintiff was compelled to, and necessarily did, incur heavy expense in procuring board and lodging, and sustained heavy damages in the loss of time, and that the provisions furnished by the said agent and owner and by the said boat to the said plaintiff while on the voyage were unwholesome and unfit and improper for the said plaintiff or any other human being to eat, and greatly injured the health of said plaintiff.

That the plaintiff was crowded into a loathsome, unhealthy cabin,
5 without sufficient room or air for health or comfort, in consequence of a large number of steerage passengers—more than said boat was allowed by law to, or properly could, carry.

That in consequence of the non-performance of said contract on the part of the said agent and owners as aforesaid the said plaintiff has sustained damages in the sum of two hundred dollars. Wherefore, the said plaintiff demands judgment against the said steam vessel Moses Taylor for the sum of two hundred dollars, with costs of suit.

VAN ARMAN, LANE & HOWE,
Pl'ff's Att'ys.

CITY AND COUNTY OF SAN FRANCISCO:

Albert N. Sterling, being duly sworn in behalf of the above plaintiff, makes oath and says that he has read the above complaint, and that the same is true.

A. N. STIRLING.

Subscribed and sworn to before me this 12th day of November, 1863.
MARTIN W. LAMB,
Justice of the Peace.

6 *Summons.*

STATE OF CALIFORNIA:

In the justice's court of the sixth township in and for the city and county of San Francisco.

The people of the State of California to the steam vessel Moses Taylor, greeting:

You are hereby summoned to appear before me at my office, in the sixth township of the city and county of San Francisco, on the 16th day of November, A. D. 1863, at 2 o'clock p. m., to answer unto the complaint of Wilson Hammons, who claims to recover of you the sum of $200 damages for the alleged non-performance of contract of the said Wilson Hammons as a steerage passenger from the city of New York to San Francisco, said contract having been made with the owner and agent of the steam vessel Moses Taylor, as per compl'nt on file in this office, when judgment will be taken against you for the said amount, together with costs and damages, if you fail to appear and answer.

To the sheriff or any constable of the said city and county, greeting:

Make legal service and due return hereof.

Given under my hand this 12th day of November, A. D. 1863.

MARTIN W. LAMB, [L. S.]
Justice of the Peace of said township.

Endorsed: I hereby certify that I have served the within summons by delivering a true copy thereof to J. H. Blethen, commander of the
7 steam vessel Moses Taylor, at the city and county of San Francisco, this 13th day of November, A. D. 1863.

J. S. LAMB, *Constable, 6th township.*

Filed January 2d, 1864.

W. HARNEY, *D. C.*

8 *Answer.*

In the justice's court, sixth township, city and county of San Francisco.

WILSON HAMMONS
vs.
THE STEAM VESSEL MOSES TAYLOR.

Isaac K. Roberts, agent for the above-named defendant, answering for and on behalf of said defendant, the steam vessel Moses Taylor, says:

That he is the duly authorized agent of the said vessel, and, as such, has the management and control thereof.

That this court has no jurisdiction of the cause of action in said complaint contained, nor of the said steam vessel Moses Taylor, because, he says, that the said cause of action as against the said vessel is a cause of action of which the courts of admiralty have exclusive jurisdiction.

That said vessel is used exclusively in navigating the high seas, and that said cause of action, if any, arose on the high seas.

And for a further and separate defense the said Isaac K. Roberts, agent as aforesaid, says:

That he denies, on information and belief, that the said plaintiff entered into an agreement with Marshall O. Robers whereby the said Roberts agreed to carry the plaintiff from the city of New York to San Francisco, California, as a steerage passenger, with all reasonable dispatch and speed, and to furnish said plaintiff, as stated in said complaint.

9 That he has no knowledge or information sufficient to form a belief as to whether the plaintiff paid the said Marshall O. Roberts the sum of $100, as stated in the complaint, and therefore denies the same.

And he denies that the said Roberts did not perform his contract with said plaintiff. He denies that said Roberts failed to carry or cause to be carried or conveyed the said plaintiff, with reasonable dispatch, from New York to San Francisco.

He denies that said Roberts failed to furnish said plaintiff proper and suitable food or water, or proper and necessary berths or conveniences for lodging while on said passage. And he denies that said plaintiff was unreasonably detained on the Isthmus of Panama, as alleged in said compl'nt.

And he denies that, in consequence, the plaintiff was compelled to or did incur heavy or any expense in procuring board or lodging, or sustained damage in loss of time.

And he denies that the provisions furnished by the agent or owner or by the said boat to the plaintiff were unwholesome, or unfit, or improper for the pl'ff or any human being to eat, or that they injured the health of the plaintiff.

He denies that the plaintiff was crowded into a loathsome or unhealthy cabin, without sufficient room or air for health or comfort, as alleged in the complaint.

He denies that the plaintiff has sustained damages in the sum of $200, or any other sum, as alleged in said complaint.

ISAAC K. ROBERTS,
Agent for the def't, the steamship Moses Taylor.

10 CITY AND COUNTY OF SAN FRANCISCO, *ss:*

Isaac K. Roberts, being duly sworn, says that he is the agent of the steamship Moses Taylor, the defendant in the above cause; that he has read the above answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters he believes it to be true.

I. K. ROBERTS.

Sworn to this 18th day of November, 1863, before me.

E. V. JOICE, *Notary Public.*

11 *No. of appeal.*

STATE OF CALIFORNIA:

In the justice's court of the sixth township, in and for the city and county of San Francisco.

WILSON HAMMONS, plaintiff,
vs.
THE STEAM VESSEL MOSES TAYLOR, defendant. } Notice of appeal.

You will please take notice that the said defendant in this action, above named, hereby appeals to the county court of the city and county of San Francisco from the whole of the judgment therein made and entered in the said justice's court on the twenty-first day of November, 1863, in favor of said plaintiff, against said defendant.

This appeal is taken on questions of both law and fact, and a stay of proceedings is claimed by virtue of an undertaking on file in said justice's court.

Dated San Francisco, this 28th day of November, A. D. 1863.

Yours, &c.,

D. LAKE, *Attorney for appellant.*

To the justice of said justices' court, and attorney for respondent.

Endorsed: Service of the within admitted.

VAN ARMAN, LANE & HOW,
Plff's Att'ys.

Filed this third day of December, A. D. 1863.

M. W. LAMB.

12 *Undertaking.*

STATE OF CALIFORNIA:

In the justice's court, sixth township, in and for the city and county of San Francisco.

KNOW all men by these presents that we, Isaac K. Roberts and Eugene L. Sullivan, are held and firmly bound unto Wilson Hammons, his executors, administrators, and assigns, in the full sum of $450, to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Signed with our hands and sealed with our seals this 30 day of Nov., A. D. 1863.

The condition of the above undertaking is this: that whereas the said Wilson Hammons has obtained a judgment against the steam vessel Moses Taylor before M. W. Lamb, esq., justice of the peace of the township, county

aforesaid, on the 21st day of November, A. D. 1863, for $200 and costs, and whereas the above defendant is desirous of appealing from the decision of said justice to the county court of the county of San Francisco, now if the above defendant shall well and truly pay or cause to be paid the amount of the said judgment and all costs, and obey any order the said county court may make therein, if the said appeal be withdrawn or dismissed, or pay the amount of any judgment, and all costs that may be recovered against the said appellant in the said county court, and obey any order the said court may make therein, then this obligation to be null and void; otherwise, in full force and virtue.

13 I. K. ROBERTS. [SEAL.]
E. L. SULLIVAN. [SEAL.]

Endorsed: "The bond is satisfactory; justification waived."
VAN ARMAN, LANE & HOWE,
Pl'ffs' Att'ys.

14 *Finding.*

In the county court, city and county of San Francisco.

WILSON HAMMONS
vs.
THE STEAMER MOSES TAYLOR.

This cause having been called in its order upon the calendar, on the 5th day of February, 1864, Van Arman, Lane & Howe appearing as counsel for the plaintiff, and Delos Lake, esq., as counsel for the defendant, a jury trial was expressly waived by the parties, and said cause was tried by the court without a jury.

Wherefore the court finds the facts to be as follows: That said defendant is a steam vessel of thirteen hundred and seventy-two tons burthen, and is used in navigating the waters of the Pacific Ocean as a common carrier of freight and passengers; that Marshall O. Roberts, of the city, county, and State of New York, is, and for a year last past has been, the owner of the steamship Moses Taylor; that on the first day of October, 1863, at the place last aforesaid, said Roberts as owner entered into a contract with plaintiff, whereby he, the said Roberts, for and in consideration of one hundred dollars, agreed to carry and transport plaintiff from the place last aforesaid by the way of Panama to San Francisco, as a steerage passenger, with all reasonable despatch, and to furnish said plaintiff with proper and necessary food, water, berths, and ship-room while on said voyage; that on the day and year last aforesaid, at the city, county, and State of New York, plaintiff, in consideration of the undertaking of said Roberts, paid to him, the said Roberts, the said sum of one hundred dollars; that pursuant to said
15 agreement the said Roberts transported and conveyed said plaintiff by the steamship Illinois from the place last aforesaid to Aspinwall, in New Grenada; that said Roberts forced plaintiff to remain at the place last aforesaid, a sickly and malarious locality, for the period of seven days; that said Roberts then caused plaintiff to be transported from Aspinwall to Panama by railroad, and from Panama to San Francisco, in the State of California, by the defendant, the said steamship Moses Taylor; that said detention of seven days at Aspinwall was caused by the negligence of said Roberts in not securing a proper connection in point of time between the said steamship Illinois and Moses Taylor at the isthmus of Panama; that said Roberts failed to furnish to plaintiff on the voyage from Panama to San Francisco, on board said steamship Moses Taylor, proper and wholesome food, a suitable supply of water for washing purposes, proper and necessary

berths and ship-room, and that said plaintiff, by reason of said detention and of said failure to supply proper and wholesome food, a suitable supply of water, and proper and necessary berths and ship-room as aforesaid, has sustained damage in the sum of two hundred dollars; and as a conclusion of law the court finds that this court has jurisdiction of the subject matter of this action, and that said defendant is liable for the damages sustained by plaintiff by reason of the failure of said Roberts to perform his contract with plaintiff as aforesaid, and that plaintiff is entitled to a judgment against the said defendant for the sum of two hundred dollars, besides costs.

16 Let judgment be entered accordingly.

SAMUEL COWLES, *County Judge.*

Endorsed: Filed March 17th, 1864.

W. HARNEY, *Dep. Clerk.*

I hereby admit due service of a copy of the within finding, and hereby waive further notice in all the cases in said court in which the steamer Moses Taylor is defendant, this 11th day of March, A. D. 1864.

DELOS LAKE, *Att'y for Def't.*

17 *Cost bill.*

In the county court, city and county of San Francisco.

WILSON HAMMONS
vs.
THE STEAMER MOSES TAYLOR. } Plaintiff's cost bill.

Justice's fees in court below	$5 00
Constable's fees in court below	1 75
Percentage on $200 at 5 per cent	10 00
Clerk's fees	3 50
Witness fees:	
W. G. Burr, seven days' attendance	14 00
one mile travel	25
Michael Magher, seven days' attendance	14 00
one mile travel	25
John Wellington, 7 days' attendance	14 00
one mile travel	25
Michael Kellela, 1 day attendance	2 00
1 mile travel	25
John Ecles, 7 days' attendance	14 00
1 mile travel	25
John Mulligan, 7 days' attendance	14 00
1 mile travel	25
George J. Hill, 7 days' attendance	14 00
one mile travel	25
Charles Moore, 7 days' attendance	14 00
1 mile travel	25
Thomas Campbell, 7 days' attendance	14 00
1 mile travel	25
A. N. Sterling, 7 days' attendance	14 00
8 miles travel	2 00
Charles Lancaster, 7 days' attendance	14 00
1 mile travel	25
Total amount	166 75

18 CITY AND COUNTY OF SAN FRANCISCO, *ss:*

O. L. Lane, being duly sworn, deposes and says that he is one of the attorneys of the plaintiff in the above-entitled action, and is better acquainted with the facts stated in the above bill of costs and disbursements than said plaintiff; that said bill of costs is just and true; and that said costs and disbursements were necessarily made and incurred on said trial.

O. L. LANE.

Subscribed and sworn to before me this second day of April, A. D. 1864.

W. HARNEY, *D. County Clerk.*

Endorsed: Filed April 2nd, 1864.

W. HARNEY, *Dep. Clerk.*

19 *Judgment.*

In the county court of the city and county of San Francisco State of California.

WILSON HAMMONS
vs.
THE STEAMSHIP MOSES TAYLOR.

This cause, being an appeal, on the part of the defendant, from the justice's court of the sixth township, was called in its order upon the calendar. Messrs. Van Arman and Lane appeared as counsel for the plaintiff, and Mr. Lake for the defendant. A trial by jury being expressly waived by the counsel of the respective parties, this cause was tried by the court without a jury. Thereupon George I. Hill, Chas. Moore, Thomas Campbell, John Wellington, Michael Kilila, and John Eckles, M. G. Burr, and Michael Maher, witnesses on the part of the plaintiff, and J. A. Brickman, George B. Gammons, S. B. Stoddard, J. A. Chadwin, W. D. Litchfield, Ira Marden, I. K. Roberts, W. S. Tuttle, James H. Blethen, and A. N. Stirling, witnesses on the part of the defendant, and were duly sworn and examined. After argument of counsel the cause was submitted to the court for consideration and decision. After due deliberation the court renders its finding and decision thereon in writing, which is filed, and that judgment be entered in accordance therewith.

Wherefore, by reason of the law and the finding aforesaid, it is ordered, adjudged, and decreed that Wilson Hammons do have and recover of and from the steamship Moses Taylor, def't, the sum of two hundred dol-
20 lars, with interest thereon, at the rate of ten per cent. per annum from the date hereof until paid, together with said plaintiff's costs and disbursements incurred in this action, amounting to the sum of one hundred and sixty-six 75-100 dollars.

Judgment rendered March 17th, A. D. 1864.

I hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled cause. Attest my hand and the seal of said court this 17th day of March, A. D. 1864.

[SEAL.]

WM. LOEWY, *Clerk,*
By W. HARNEY, *Deputy Clerk.*

21 *Cert. of judgment roll.*

County court of the city and county of San Francisco, State of California.

WILSON HAMMONS
vs.
STEAMSHIP MOSES TAYLOR.

I William Loewy, county clerk of the city and county of San Francisco,

State of California, and ex officio clerk of the court thereof, do hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled cause and recorded in judgment book No. 2 of said court, at page 255; and I further certify that the foregoing papers, hereto annexed, constitute the judgment roll in said cause.

Witness my hand and seal of said county court this sixth day of April, A. D. 1864.

[SEAL.]

WM. LOEWY, *Clerk*,
By WM. HARNEY, *Deputy Clerk.*

Endorsed: Judgment roll filed April 6th, 1864.

WM. LOEWY, *Clerk*,
By W. HARNEY, *Deputy Clerk.*

22 *Bill of exceptions.*

County court, city and county of San Francisco.

WILSON HAMMONS
vs.
THE STEAMER MOSES TAYLOR.

This cause came on to be tried before the court without a jury, (a jury trial being waived, as provided by statute,) and the plaintiff gave evidence tending to prove the facts alleged in the complaint and then rested his cause, whereupon the defendant's counsel moved to dismiss the case on the ground that the court had not jurisdiction of the case; that by the constitution and laws of the United States a court of admiralty of the United States had exclusive jurisdiction of this cause as against the said steamship Moses Taylor. The court denied the motion and ruled and decided that this court had lawful jurisdiction of the case, to which decision the defendant's counsel excepted. The defendant then introduced evidence on the part of the defense, and the cause was then submitted, and the court, after due deliberation, rendered a decision, in writing, in favor of the plaintiff and against the defendant for two hundred dollars, damages and costs, to which decision the defendant's counsel duly excepted; and because none of the said exceptions so offered and made to the opinions and decisions of the said court
23 do appear upon the record of said trial, therefore, on the prayer of the said defendant, by his counsel, the judge of the said court hath to this bill of exceptions set his hand and seal this 24th day of March, A. D. 1864.

SAMUEL COWLES, *County Judge.* [SEAL.]

Filed March 25th, 1864.

W. HARNEY, *Dep. Co. Clerk.*

24 *Certificate of the county judge.*

STATE OF CALIFORNIA:

In the county court of the city and county of San Francisco.

THE STEAMER MOSES TAYLOR, plaintiff in error,
versus
WILSON HAMMONS, defendant in error.

I, Samuel Cowles, county judge of the city and county of San Francisco, State of California, and county judge of the county court thereof, do hereby certify that the foregoing are true and correct copies of the various papers on file and of record in said county court, and of the judgment and record and of the whole thereof, made and entered and of record in the above cause, and

in pursuance and by virtue of the annexed writ of error issued from the circuit court of the United States for the northern district of California to me directed, I do hereby certify and transmit the accompanying record of all the proceedings had in the above cause to the Supreme Court of the United States, as by said writ I am commanded.

In witness whereof, I have hereunto set my hand and caused the seal of said county court to be affixed hereto, at the city and county of San Francisco, this ninth day of June, A. D. 1864.

[SEAL.] SAMUEL COWLES, *County Judge.*

Attest. WM. LOEWY,
County Clerk of the City and County of San Francisco and ex officio Clerk of the County Court thereof.

Filed September 10, 1864.

Supreme Court

OF THE UNITED STATES.

THE STEAMER "MOSES TAYLOR,"

vs.

WILSON HAMMONS,

BRIEF AND POINTS.

EDWARDS PIERREPONT,
Counsel for Plaintiff in Error.

NEW YORK:
WM. C. BRYANT & CO., PRINTERS, 41 NASSAU STREET, COR. LIBERTY.

1866.

Wm. C. Bryant & Co., Printers, 41 Nassau Street, cor. Liberty, N. Y.

Supreme Court,

OF THE UNITED STATES.

THE STEAMER *Moses Taylor*,
vs.
WILSON HAMMONS.

STATEMENT.

The question in this case is, whether a California Justice of the Peace can proceed in Admiralty against the steamship "*Moses Taylor*," and this involves the question whether such Justice of the Peace can make a valid decree in Admiralty against a French or English ship.

The case is one of great national importance, and fifty-five other suits await the decision of this.

It seems well settled that on this side of the Rocky Mountains, a village Justice of the Peace has no Admirality jurisdiction, and that his condemnation in Admirality of a British, French, or Russian vessel would not be respected by the world.

In the case before the Court the summons reads as follows:

"SUMMONS.

"State of California:

"In the Justice's Court of the Sixth Township, in and "for the City and County of San Francisco.

"The People of the State of California to the steam vessel "*Moses Taylor*, greeting:

"You are hereby summoned to appear before me at my "office, in the sixth township of the city and county of San "Francisco, on the 16th day of November, A. D. 1863, at "2 o'clock P. M., to answer unto the complaint of Wilson "Hammons, who claims to recover of you the sum of $200, "damages for the alleged non-performance of contract of "the said Wilson Hammons, as a steerage passenger from "the city of New York to San Francisco, said contract "having been made with the owner and agent of the steam "vessel *Moses Taylor*, as per complaint on file in this "office, when judgment will be taken against you for the "said amount, together with costs and damages, if you fail "to appear and answer.

"To the Sheriff or any constable of the said city and "county, greeting:

"May legal service and due return hereof,

"Given under my hand, this 12th "day of November, A. D. 1863,

"MARTIN W. LAMB, [L. S.]
"Justice of the Peace of said Township."

(Endorsed.)

"I hereby certify that I have served the within sum- "mons by delivering a true copy thereof to J. H. Blethen, "commander of the steam vessel *Moses Taylor*, at the city "and county of San Francisco, this 13th day of November, "A. D. 1863.

"J. L. LAMB,
"Constable, 6th Township.

"Filed January 2d, 1864.

"W. HARNEY, D. C."

The libel or complaint appears at fol. 3 of the case, and ends thus:

"*Wherefore, the said plaintiff demands judgment against "the said steam vessel Moses Taylor for the sum of* $200, "*with costs of suit.*"

The answer by the agent of the vessel says (fol. 8) that this (the Justice's) Court has no jurisdiction.

"That this Court has no jurisdiction of the cause of "action in said complaint contained, nor of the said steam "vessel *Moses Taylor*, because, he says, that the said cause "of action as against the said vessel is a cause of action of "which *the Courts of Admiralty* have *exclusive juris-* "*diction.*"

"That said vessel is used exclusively in navigating the "high seas, and that said cause of action, if any, arose on "the high seas."

At fol. 2 of the case will be found the judgment of the township Justice of the Peace, as follows:

"November 16, 1863.

"Case called at 1 o'clock P. M. Plaintiff by Van "Arman, Lane & How; defendant by Delos Lake in "Court.

"Defendant files an answer to the complaint. John "Mulligan, Wm. Harding and A. N. Starling, sworn and "examined as witnesses for plaintiff. Plaintiff rests.

"Case closed and submitted. Whereupon, on the 21st "day of November, 1863, this Court renders judgments in "favor of the plaintiff and against the defendant for the "sum of two hundred dollars damages, and costs of action.

"Justice's fees, $5; Constable's fees, $1.75.

"Notice of appeal and appeal bond filed by defendant "December 3d, 1863.

"I hereby certify the foregoing to be a true and correct "transcript of my docket of the above entitled cause, and "the papers hereunto attached are all that have been filed "with said action.

"MARTIN W. LAMB,
"Justice of the Peace, Sixth Township."

The County Court affirmed the judgment of the township Justice (fol. 15), and, on Writ of Error, the cause comes before this Court (fol. 1).

THE PLAINTIFF'S STATEMENT OF HIS CAUSE OF ACTION.

The plaintiff alleges, in his complaint, that Marshall O. Roberts was part owner of the vessel, and agreed to carry him, the plaintiff, "from New York "to San Francisco, as a steerage passenger, with all "reasonable speed, to furnish the plaintiff with "proper and necessary food, water, and berth, or "other convenience for lodging, while on said "voyage (fol. 3)."

The wrong for which the vessel is made liable is stated (at fol. 4) as follows:

"Yet the said Mashall O. Roberts did not perform, on "his part, the said contract; but, on the contrary, failed "to carry, or cause to be carried or conveyed, the said "plaintiff with reasonable dispatch from New York to San "Francisco, and also failed to furnish to said plaintiff "proper and suitable food or water, or proper and neces-"sary berths or conveniencies for lodging while on said "vessel, but the said plaintiff was in fact detained on said "passage, on the Isthmus of Panama, for a long time, to "wit, for the period of eight days.

"In consequence whereof the said plaintiff was com-"pelled to, and necessarily did, incur heavy expense in "procuring board and lodging, and sustained heavy dam-

" ages in the loss of time, and that the provisions furnished " by the said agent and owner and by the said boat to the " said plaintiff while on the voyage were unwholesome " and unfit and improper for the said plaintiff or any other " human being to eat, and greatly injured the health of " said plaintiff.

" That the plaintiff was crowded into a loathsome, un- " healthy cabin, without sufficient room or air for health or " comfort, in consequence of a large number of steerage " passengers; more than said boat was allowed by law to, " or properly could, carry.

" That, in consequence of the non-performance of said " contract on the part of the said agent and owners as " aforesaid, the said plaintiff has sustained damages in the " sum of two hundred dollars.

" Wherefore, the said plaintiff demands judgment " against the said steam vessel *Moses Taylor*, for the sum " of two hundred dollars, with costs of suit.

" VAN ARMAN, LANE & HOWE,
" Plff's Attys."

THE FINDING OF THE COURT.

At fol. 15, the Court finds that the plaintiff was detained seven days on the voyage, and further finds:

" That said Roberts failed to furnish to plaintiff, on the " voyage from Panama to San Francisco, on board said " steamship *Moses Taylor*, proper and wholesome food, a " suitable supply of water for washing purposes, proper " and necessary berths and ship room; and that said plain- " tiff, by reason of such detention and of said failure to " supply proper and wholesome food, a suitable supply of " water, and proper and necessary berths and ship room as " aforesaid, has sustained damage in the sum of two hun- " dred dollars; and, as a conclusion of law, the Court finds " that this Court *has jurisdiction of the subject matter of* " *this action*, and that said defendant is liable for the dam- " ages sustained by plaintiff, by reason of the failure of

"said Roberts to perform his contract with plaintiff as "aforesaid; and that plaintiff is entitled to a judgment "against the said defendant for the sum of two hundred "dollars, besides costs.

"Let judgment be entered accordingly.

"SAMUEL COWLES,
"County Judge."

GRAVAMEN OF THE COMPLAINT.

The ground of complaint is, that on the voyage from Panama to San Francisco the *Moses Taylor* was unlawfully crowded, and the plaintiff did not have the berths, ship room, food, or water, to which he was entitled. What those comforts were, or to what amount of luxury a steerage passenger, paying $100 from New York to San Francisco, is supposed to be entitled to, does not appear.

POINTS.

First Point.—The question made by the case is, whether a township justice of the peace can proceed in Admiralty against a foreign steamer for wrongs or inconveniences suffered by a passenger on the high seas.

REMARKS.

If Justice Patrick Larry Maloney, asserting his admiralty jurisdiction in New York, should proceed to a decree in Admiralty against a Cunard steamer, on the ground that Biddy did not get as good victuals in the steerage as she had expected on her voyage to "a free country," a *sale* of the steamer under such judgment would hardly be respected by the world.

Decrees in Admiralty are respected everywhere. If the township Justice and the United States Judge should issue process against the Cunard steamer "Persia," on the same day, the Justice would pronounce his decree in six days, sell the ship and leave the tardier judgment of the United States Court a barren remedy. This *concurrent* jurisdiction would be found inconvenient, and foreign nations might complain that the Admiralty learning of the village Justice of the Peace, was not quite adequate to such high jurisdiction, and led to conflicting judgments and intolerable uncertainty.

Second Point.—The principle is the same, whether the passenger goes from Liverpool to San Francisco on the "Persia," or from New York to San Francisco on the "Moses Taylor."

An agreement to transport a man or a horse over the ocean is a "*maritime contract*," and comes under the Admiralty and Maritime jurisdiction; and it matters not whether the ship on her voyage stops at Bermuda, Cape Horn or Panama.

The schooner Tiltan, 5 Mason 465.
Plummer *vs.* Webb, 4 Mason 380.
Drinkwater *vs.* the brig Spartan, Ware's Rep. 91.
Steel *vs.* Thatcher, Ware's Rep., 149.
De Sovio *vs.* Boit, 2 Gallison 398.
The sloop Mary, 1 Paine's Rep. 673.
Davis *vs.* A Nev. Brig, Gilp. 473, 1 Kent's Com., 370, 371.
New Jersey Steam Navigation Company *vs.* Merchants' Bank, 6 Howard 344.
Bazin *vs.* Liverpool Steamship Company, 5 Am. L. G., 465.

Third Point.—The courts of California have decided that a township Justice *has* Admiralty jurisdiction, and can proceed in Admiralty against a foreign ship.

In Taylor *vs.* The Steamer Columbia, 5 California, 268, the head note read thus:

"The judicial power of the courts of the United States "in Admiralty and Maritime cases is not exclusive, and "the States have the power to confer that jurisdiction to "its *fullest extent* upon their own State courts."

Judge Heydenfeldt, delivering the opinion of the Court says (page 272):

"In the case of Averill *vs.* The steamer Hartford, 2 Cal. "308, we decided that the act providing for actions against "steamers, vessels and boats," confers upon the District "Courts (of California) *Admiralty jurisdiction pro tanto*, "and the proceedings in such actions must be governed "by the *principles and forms* of Admiralty Courts, ex- "cept when otherwise controlled and directed by the "Act.

* * * * * *

"In the case of Gordon *vs.* Johnson, 4 Cal. 368, we had "occasion to examine and *settle* the proper rule of con- "struction, as to the judicial powers relatively of the Fed- "eral and State Governments. Taking as *our point of de- "parture*, the universally conceded principle, that the "States are *original sovereigns, with all the powers of "sovereignty* not expressly delegated by the Federal com- "pact."

* * * * * *

"This subject, however, was fully examined in the case "of Gordon *vs.* Johnson before cited, and we are satisfied "to adhere to our *treatment of the proposition* as then laid "down. It results from the views we have taken, that the

" States are not deprived by the Constitution of the United " States, of the power to confer upon their own Courts *all* "*Admiralty and Maritime Jurisdiction.*

"*The treatment of the proposition*" in Johnson *vs.* Gordon, 4 Cal., 368, was administered by the same learned Judge Heydenfeldt, and resulted in the following conclusions :

" No cause can be transferred from a State Court to any " Court of the United States."

" Neither a writ of error nor appeal lies to take a case " from a State Court to the Supreme Court of the United "States."

It is evident that the learned Judge was afterwards more than satisfied with his "treatment of the proposition" in Johnson *vs.* Gordon, 2 Cal. Since in that case he only decided that the State Court had Admiralty jurisdiction *pro tanto.*" But in Taylor *vs.* The Steamer Columbus, 5 Cal., he decided that the State Court had Admiralty jurisdiction *in toto.*

I have hopes that this Court may not be quite so well "satisfied" with this "treatment" as the learned Judge who prescribed it.

Fourth Point.—The first section of the third article of the Constitution of the United States, is as follows :

" The judicial power of the United States shall be vested " in one Supreme Court, and in such inferior Courts as the " Congress may from time to time ordain and establish."

And the first clause of the second section of the same article is in these words :

"The judicial power shall extend to all cases in law and "equity arising under this Constitution, the laws of the "United States, and treaties made or which shall be made "under their authority, to all cases affecting ambassadors, "other public ministers, and consuls. *To all cases of Ad-* "*miralty and maritime jurisdiction.*"

* * * * * *

The ninth section of the Judiciary Act of 1789, declares that "The District Courts shall have *exclusively* of the "Courts of the several States, * * * * cognizance "of *all civil causes of Admiralty and Maritime Jurisdic-* "*tion;*" * * * * "saving to suitors, in all cases, the "right of a common law remedy, *where the common law* "*is competent to give it.*"

From the passage of that Act until the decision in 5 Cal. Rep., above cited, a period of sixty-five years, the *exclusive* jurisdiction of the Courts of the United States in "*all cases of Admiralty and Maritime Jurisdiction*," was everwhere conceded.

The discovery was first made by Mr. Justice Heydenfeldt, that, in consequence of the "original sovereignty" of California, the Judiciary Act of 1789 was unconsitutional, and that the Courts of the United States had no exclusive jurisdiction in the Admiralty, but only concurrent jurisdiction with a township Justice of the Peace in California;—and the learned Judge expressed himself as "satisfied to adhere to "his treatment of the proposition," and with his "*point of departure*," as he calls it, on account of California's "*original sovereignty.*"

We have here something novel to meet; something quite beyond the pretensions of South Carolina in her boasting days; South Carolina is an

ancient State, older than the Judiciary Act or the Constitution. But California was *not born* until some sixty years after the passage of that Act, and then she was fashioned by the power of the United States out of her own territory—bought with a price. It is interesting to hear this *naive* talk about the "original sovereignty of California," which is to over-ride the Judiciary Act and the uniform decisions of seventy years. Where got California this "*original sovereignty?*

We ask the Court to smother out this *Secession brand* before it wrap in smoke and flames of war the Pacific Coast, as late it did the Atlantic shore. This was the accursed heresy which bred our fratricidal war; spread woe and desolation over the whole South; consigned to bloody graves five hundred thousand of our youth, and ante-dated death to more than a million of our countymen.

Fifth Point.—The Constitution of the United States declares that "The judicial power shall extend "*to all cases of Admiralty and Maritime Jurisdiction.*" And following the Constitution, the Judiciary Act, which has been in force now seventy-seven years, declares the *exclusive* jurisdiction of the Courts of the United States "*in all cases of Admiralty and Maritime Jurisdiction.*

This exclusive jurisdiction has for seventy years been the settled law; and has been repeatedly affirmed by the Courts.

In Martin *vs.* Hunter, 1 Wheaton, 337, the Court says:

"It is manifest that the judicial power of the United "States is, unavoidably, in some cases, exclusive of all "State authority, and in all others may be made so at the "election of Congress. No part of the criminal jurisdic- "tion of the United States can, consistently with the Con- "stitution, be delegated to State tribunals. The *Admir-* "*alty and Maritime Jurisdiction is of the same exclusive* "*cognisance.*"

An affirmation of this exclusive jurisdiction will be found in the opinion of Chief Justice Marshall (Slocum *vs.* Mayberry, 2 Wheat., 9); and of Mr. Justice Story, in Gelston *vs.* Hoyt (3 Wheat., 246); and of Mr. Justice Wagner, in Waring vs. Clarke (5 Howard, 451); and of Mr. Justice Catron, in Waring *vs.* Clarke (5 Howard, 466); and in the case of the bark *Chusan* (2 Story's R., 455).

And in 2 Story's Commentaries on the Constitution (Sec. 1672), it is said that,

"The admiralty jurisdiction naturally connects itself on "the one hand with our diplomatic relations, and the du- "ties to foreign nations and their subjects; and on the other "hand, with the great interest of navigation and commerce, "foreign and domestic: there is, then, a peculiar wisdom "in *giving to the national government a jurisdiction of this* "*sort which cannot be yielded*, except for the general good, "and which multiplies the securities for the public peace "abroad, and gives to commerce and navigation the most "encouraging support at home."

And in Cohen *vs.* Virginia (6 Wheaton, 314, 315, 325), it was conceded that the Federal Courts had the "*exclusive* admiralty and maritime jurisdiction."

And in Martin *vs.* Hunter (1 Wheat., 372), Mr. Justice Johnson says:

"With regard to *admiralty* and *maritime jurisdiction*, "it would be difficult to prove that the States could resume

"it, if the United States should abolish the Courts vested "with that jurisdiction."

The United States District Court for the District of Missovri, in the case of ASHBROOKS *vs. The Golden Gate*, says: Am Law Reg

"The only exception to the exclusive cognizance is not "a remedy in the common law Courts, but a common "law remedy, no matter in what State Court it may be "brought, or what may be the system under which the "Court may proceed. There is also a qualification of this "saving of a common law remedy. It can be only in a "case 'where the common law *is competent to give it.*' "This qualification was, doubtless, intended to cut off new "remedies which might be devised, but which were un- "known to the common law; for if the common law was "not competent to give the remedy sought, then the party "could not resort to any other, but must sue in the United "States Court in Admiralty.

"A suitor cannot, therefore, say, 'a common law remedy "is saved to me, and if there be none to effect my object "(the seizure of a vessel), I can use any the Legislature "may have devised for my case.'

* * * * * *

"What lawyer ever knew or heard of a proceeding *in* "*rem* as a common law remedy? Even the actions of "detinue or replevin have in them nothing of the nature "of proceedings *in rem*. Each requires a plaintiff and "defendant, who are persons, and the judgments bind no "one but parties and privies. True, a proceeding *in rem* "may be used in common law Courts of the States, but in "all such cases it is given by statute, or is a proceeding "under the civil law. And the fact that it is given by "statute, and did not exist before the statute which gave "it, in States where the common law prevails, shows that "it had no existence as a remedy at the common law."

* * * * * *

"When a Court has jurisdiction to proceed *in rem*, and "does so proceed, its judgments are binding and conclusive

" on the whole world; and this is so, whether the tribunal " be foreign or domestic. (The *Mary*, 9 Cranch R., 126.)"

" Not so with judgments at common law; they bind only " parties and privies."

* * * * * * *

" If there is an average of fifty counties to each State, " and twenty justices of the peace to each county, we " should then have in these United States thirty-one thou- " sand Courts of Admiralty and Maritime Jurisdiction, to " say nothing of the Courts of Record. These Courts pro- " ceeding against and seizing and selling vessels of foreign " nations and those of sister States, and although they " would have all the powers of Courts of Admiralty, yet " they would, in but few instances, proceed according to " the maritime law, which is part of the law of nations, nor " according to act of Congress (for Congress can pass no " law regulating proceedings in the State Courts;) but " they would proceed according to the statutes of the sev- " eral States, and usages that would there prevail, each " State having a different system. The effect of this " must be, it appears to me, to imbroil the United States " with foreign nations, and the several States with each " other, and to produce retaliatory laws and proceedings, " and endless conflict, uncertainty and mischief. And this, " I repeat, would render nugatory the provisions of the " 9th section of the Judiciary Act of 1789; *and the power* " *of Congress to regulate commerce* (*and navigation* as inci- " dent thereto) with foreigns, and among the several States. " If I am right in the views above expressed, there can be " no concurrent jurisdiction *in rem*, in Admiralty cases be- " tween the United States Courts and the Courts of the " several States."

Sixth Point.—The *Moses Taylor* is a steamship navigating the high seas, owned out of the State of California, and a foreign vessel.

The *township* justice proceeds against her *in rem;* not by common law action; the judgment is against *the ship*—no execution can issue by virtue of this judgment against any person, or the property of any person; the vessel alone must be sold to satisfy the decree of the township justice.

He claims to have Admiralty jurisdiction and to proceed by Admiralty forms; and the Courts of California decide that he has all *Admiralty jurisdiction* and *should* proceed according to *Admiralty forms.* (5 Cal., 272.)

It is now for the first time discovered that the Judiciary Act of 1789 is a nullity: that the decisions of this Court, so ancient, numerous and uniform, are all erroneous; that a township justice has all Admiralty jurisdiction; that California, but lately a conquered, purchased province of the United States, may, by virtue of her "*original sovereignty*," set aside the statutes and the laws of the Union, and confer Admiralty powers upon a village justice.

It is high time that these absurd, disloyal and dangerous pretensions receive their just rebuke.

EDWARDS PIERREPONT,
Counsel for the Plaintiff in Error.

SUPREME COURT
OF THE UNITED STATES.

THE STEAMER MOSES TAYLOR,

PLAINTIFF IN ERROR,

vs.

WILSON HAMMONS,

DEFENDANT IN ERROR.

Error to the County Court, in and for the City and County of San Francisco, California.

BRIEF OF DEFENDANT IN ERROR.

O. L. LANE,
ATTORNEY.

M. H. EDMONDS,
OF COUNSEL.

John Thompson & Co. print, 505 Clay street, San Francisco.

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DEFENDANT IN ERROR.

Error to the County Court, in and for the City and County of San Francisco, California.

BRIEF OF DEFENDANT IN ERROR.

This action was brought by the defendant in error in Justice's Court, under the Statutes of California, against the Moses Taylor, for a breach of passenger contract. The complaint alleged as follows:

That said Moses Taylor is a steam vessel of over 1,000 tons burthen, and is used in navigating the waters of the Pacific Ocean, and as a carrier of freight and passengers.

That Marshall O. Roberts is, and was at the time hereinafter mentioned, one of the owners and the agent of said vessel.

That heretofore, to wit: on the 1st day of October, A. D. 1863, this plaintiff entered into a contract with the said Marshall O. Roberts, as agent and owner, whereby the said Marshall O. Roberts agreed to carry the said plaintiff from the city of New York to San Francisco, California, a steerage passenger, with all reasonable dispatch and speed; to furnish the said plaintiff with proper and necessary food, water and berth, or other conveniences for lodging, while on said voyage between the places aforesaid.

That pursuant to said contract the said plaintiff took passage at said city of New York, on board of the steamer Illinois, on the day last aforesaid, and was landed at Aspinwall in Central America, was conveyed across the Isthmus of Panama on the Panama Railroad to Panama, and from Panama to San Francisco on the defendant, Moses Taylor, arriving at the place last aforesaid on or about the 8th day of November, A. D. 1863.

That in consideration thereof the said plaintiff, on his part, agreed to, and did at the time last aforesaid, pay the said Marshall O. Roberts, owner and agent as aforesaid, the sum of one hundred dollars.

Yet, the said Marshall O. Roberts did not perform, on his part, the said contract; but on the contrary, failed to carry, or cause to be carried, the said plaintiff, with reasonable dispatch from New York to San Francisco; and also failed to furnish to said plaintiff proper and suitable food or water, or proper and necessary berths or conveniences for lodging, while on said vessel; but the said plaintiff was, in fact, detained on said voyage, on the Isthmus of Panama, for a long time, to wit: for the period of eight days.

In consequence whereof, the said plaintiff was compelled to, and necessarily did, incur heavy expense in procuring board and lodging, and sustained heavy damages in the loss of time; and that the provisions furnished by the said agent and owner, and by the said boat to the said plaintiff, while on the voyage, were unwholesome and unfit and improper for the said plaintiff, or any other human being to eat, and greatly injured the health of said plaintiff.

That the plaintiff was crowded into a loathsome, unhealthy cabin, without sufficient room or air for health or comfort, in consequence of a large number of steerage passengers—more than said boat was allowed by law to, or could properly carry.

That in consequence of the non-performance of said contract, on the part of the said agent and owners as aforesaid, the said plaintiff has sustained damages in the sum of two hundred dollars.

Wherefore, the said plaintiff demands judgment against the said steam vessel, *Moses Taylor*, for the sum of two hundred dollars, with costs of suit.

VAN ARMAN, LANE & HOWE,
Plaintiff's Attorneys.

(Duly Verified.)

The answer of Isaac K. Roberts, agent for and on behalf of said vessel, denied each and every allegation of the complaint, and alleged that the Court had no jurisdiction of the cause of action in said complaint contained, nor of the said steam vessel, Moses Taylor; because, he says that the said cause of action, as against the said vessel, is a cause of action of which the Courts of Admiralty have exclusive jurisdiction; that said vessel was used exclusively in navigating the high seas, and that said cause of action, if any, arose on the high seas.

The cause was tried in Justice Court, and afterwards appealed to the County Court in and for the city and county of San Francisco, and on the trial thereof in that Court the plaintiff gave evidence tending to prove the facts alleged in the complaint, and then rested his cause. Whereupon the defendant's counsel moved the Court to dismiss the case, on the ground that the Court had not jurisdiction of the case; that by the Constitution and laws of the United States the Courts of Admiralty of the United States had exclusive jurisdiction of this cause, as against the said steamship Moses Taylor.

The Court denied the motion, and ruled and decided that this Court had lawful jurisdiction of this case, to which decision the deft's counsel excepted.

The defendant then introduced evidence on the part of the defence.

The cause was then submitted.

The Court, after due deliberation, rendered a decision, in writing, in favor of the plaintiff and against the defendant, for two hundred dollars, damages and costs.

To which the defendant's counsel duly excepted.

Whereupon, final judgment was entered in accordance with said decision, and from that judgment the defendant brings this writ of error.

The counsel for the plaintiff in error claims that this is a case within the admiralty and maritime jurisdiction of the Federal Courts, and that such jurisdiction is exclusive.

We maintain the negative of both propositions, and will endeavor to show :—

1. That this is not a case of admiralty or maritime jurisdiction.

2. That the grant of such jurisdiction to the Federal Courts contained in the Constitution, is not exclusive.

3. That these proceedings in the State Court fall within the exception contained in the Judiciary Act of 1789, saving to suitors a common law remedy in all cases where the common law is competent to give it.

I.

This action was brought against the plaintiff in error under the fifth subdivision of section 317 of the Practice Act of California, which provides that all steamers, vessels and boats shall be liable "for non-performance or mal-per-"formance of any contract for the transportation of persons "or property, made by their respective owners, masters, "agents or consignees," and gives a remedy *in rem* similar in some respects to the remedy in admiralty.

Under this act, according to the construction given to it by the Courts of that State, the liability of a vessel for a breach of such contract is not limited to breaches by or on board of the vessel itself (9 Cal. 697). At least that was the view taken of the act in this case, and fifty-five others in the County Court depending on the result of this case. And the "Moses Taylor" was, therefore, held liable for breaches on the Isthmus as well as on board, although it nowhere appears that she was the cause of the detention. The correctness of this construction is not a matter for review in this Court (5 Howard 317).

In admiralty a vessel is not liable for torts, or breaches of contract in which it is in no way instrumental. And Courts of Admiralty do not take cognizance of torts committed on land. Nor is a contract for the transportation of passengers, made on land, to be performed partly on land and partly by water, as in this case, a "maritime contract." It may be urged that the substantial portion of the voyage was on the sea; for, while the admiralty jurisdiction was confined to tide water, it was held to be sufficient if the substantial portion of the voyage was within the ebb and flow of the tide, though its commencement or termination might be beyond (6 How. 344, and 1 Wallace, Jr. 33). But in those cases *the entire voyage was by water* and made in *one* vessel. The contract in this case is an entirety, to carry from New York to San Francisco, requiring for its fulfillment two steamers and a railway. The *land* carriage is a substantial part of the voyage. It obviates the necessity of a long and tedious voyage by water, and gives to that route its chief value. It is of no consequence whether the land transit between the two oceans be long or short. The Court will not determine the question of jurisdiction by a comparison of the distances by land and by water. If this contract is of admiralty cognizance, so is an agreement for the transportation of passengers from Liverpool to San Francisco, *via* New York, Chicago and Salt Lake. There is no difference in principle between the two cases. In both, the

voyage by water forms a substantial part of the contract, and so does that by land.

If a passenger contract is of admiralty cognizance at all, it is because it comes substantially within the definition of an affreightment (1 Blatch. C. C. R. 569; id. 360). But affreightments relate exclusively to voyages by *water*. And it was conceded by Mr. Justice Nelson, in The Pacific (1 Blatch. 585), that a contract "must be *wholly* of admiralty "cognizance, or else it is not at all within it." He also expressly admits the correctness of the argument for the claimant, that "It is not enough that the contract includes an obligation, or some obligation of a maritime nature: but that it must, as an entirety in all its material and substantial parts, be for the performance of maritime services, or else the case is wholly without the limits of the admiralty jurisdiction (ibid 585–573). Assuming this to be the law, the agreement, in this case, is not as an entirety, a maritime contract.

Again, in a proceeding *ex contractu*, in the admiralty, there must not only be a maritime contract, but also a maritime cause of action. In other words, the ship must be bound for the performance of the contract, otherwise no cause of action *in rem* can exist (ibid 587). It cannot be contended that the "Moses Taylor" was bound for the performance of the entire contract, according to the principles of admiralty and maritime law. It was only by force of the statute that she could have been held liable—at least, for the breaches occuring on the Isthmus, inasmuch as she does not *appear* to have been the instrumental cause of the detention. And this Court can presume no fact necessary to sustain the admiralty jurisdiction (7 Peters. 341). If the statute creates a liability against the vessel unknown to the admiralty law, it can only be enforced in the State Courts; and it is for them to decide as well upon the extent of the liability thus created, as upon its validity within the Constitution of the State; and if the statute, as thus construed, is not in conflict with any Act of Congress, nor with the

Constitution of the United States, this Court has no jurisdiction to review the decision of the State Court, and the writ of error should, therefore, be dismissed.

Ocean Ins. Co. vs. Polleys, 13 Peters. 157.
Coon vs. Gallagher, 15 id. 18.
Com. Bank vs. Buckingham, 15 How. 317.
Armstrong vs. Treasurer, etc. 16 Peters. 281.
Crowell vs. Randell, 10 id. 368.

II.

The validity of State laws of this character has been expressly adjudicated in the following cases: (2 *Ohio, N. S.* 26; 2 *id.* 142; 3 *id.* 105; 31 *Ala.* 659; 9 *Cal.* 697; 5 *Cal.* 268; and conceded in 1 *Paine C. C. R.* 621–626; 2 *Blatch. C. C. R.* 427). And this Court virtually concedes their validity—*First*, by basing thereon a portion of the admiralty jurisdiction of the District Courts (4 *Wheaton* 439; 7 *Peters*, 324); and *subsequently*, by amending the 12th rule in admiralty, so as to retain jurisdiction *in personam*, but leaving the enforcement of the lien *in rem* to the State Courts (21 How. 248; 1 Black 523–530; 22 How. 129; 20 id. 402). No case has ever arisen calling for the determination of the question by this Court. Martin vs. Hunter's lessees (1 Wheat. 304), and Cohen vs. Virginia (6 Wheat. 264), were upon the question whether a writ of error would lie to a State Court. In Slocumb vs. Mayberny (2 Wheat. 1), the question was *not* raised by the defendant in error. The judgment of the State Court was *affirmed*, on the ground that the Embargo Act did not authorize the seizure of the cargo, and that replevin would lie for it in the State Court.

In Gelston vs. Hoyt (3 Wheat. 246), the only question presented was the legality of the ruling of the State Court rejecting evidence of forfeiture, on the ground that the judgment of the United States Court was conclusive on that question (pp. 333, 334). And the ruling of the State Court was *affirmed*. The Barque Chusan (2 Story, 455) is not in point. Neither is Warnig vs. Clarke (5 How. 461). In that, and in most of the cases where the question of admi-

ralty jurisdiction has been discussed, the question was whether it extended to such a case—not whether it was *exclusively* vested in the District Courts.

It is not denied that many *dicta* may be found asserting or assuming such exclusive jurisdiction. But we have seen no case in which that question has been *directly* decided.

As an *original* question, it is submitted that it has no foundation in principle. The origin of all the misunderstanding on the subject lies in the Judiciary Act.

Too much importance has always attached to that Act as a legislative interpretation of the Constitution. As many members of the Constitutional Convention were in the first Congress, and may reasonably be supposed to have been familiar with the commonly received construction of its provisions among the members of the Convention, this legislative expression of opinion has often been regarded as entitled to almost as much weight as a judicial decision. But the *prestige* which has dazzled so many could not blind the eyes of Chief Justice Marshall and his associates, who were unanimously of the opinion that the Act was unconstitutional in the very important particular of the organization of the Circuit Courts. (See their letter in full to the President, in Story on the Const. sec. 1579, note 1.) And when its constitutionality in that respect was finally determined in 1803, the opinion of the Court was based not upon the proper construction of the provision, but upon the long practice and acquiescence under it.

Congress, throughout that Act, legislated upon the supposition that whatever jurisdiction was by the Constitution vested in the Federal Courts, might be made exclusive.

Story on the Const. sec. 1751

And judges and commentators have not always been sufficiently alive to the distinction between an Act of Congress, and a constitutional grant; and have assumed the jurisdiction to be exclusive without inquiry, because Congress declared it so. And because the language of the Judiciary Act raised a doubt of the jurisdiction of the State tribunals, suitors have usually sought redress in the District

Courts, whose jurisdiction was unquestioned, and hence has arisen a sort of negative acquiescence in a doctrine often asserted, but never demonstrated nor decided. Not such a general acquiescence, however, as the learned counsel for the plaintiff in error seems to believe. What Justices Story and Hayne frequently asserted, was as frequently denied by Justices Daniel Woodbury, Baldwin and others, and by many State Courts. The cases cited above, and many others asserting the validity of State laws, like the present, are sufficient to rebut any presumption of acquiescence. It is also well known that most of the States bordering on navigable waters have similar laws, and that the Courts of such States have hitherto exercised almost unquestioned jurisdiction under such laws, by proceedings *in rem*.

That no case has ever before been brought here involving the validity of such laws, is evidence of a very general acquiescence in their validity among lawyers, judges and people; and if the doctrine of acquiescence is good to support a grant of Federal powers, it ought to be equally potent to maintain those reserved to the States.

After all, it is clear that the determination of this important question must depend upon the true construction to be given to the Constitution.

Among the most approved rules of interpretation to determine the exclusiveness of Federal authority, are the following: 1. Where the grant is exclusive in its terms. 2. Where the power is prohibited to the States. 3. Where there is a direct repugnancy, or incompatibility, in its exercise by the States.

(Story on the Constitution, sec. 436, 447.
1 Kent, 396.

"In all other cases a reasonable interpretation of that "instrument necessarily leads to the conclusion, that the "powers so granted are never exclusive of similar power "existing in the States."

(Per Story, J. in 5 Weaton, 49).

It is not to be denied that that eminent jurist and commentator was disposed to concede to the Admiralty Courts their full measure of jurisdiction. He frequently speaks of it as exclusive, not because made so in terms, nor because it is prohibited to the States, but on account of a supposed repugnancy, or incompatibility, in its exercise by the States.

(5 Weaton, p. 49.)
(1 Weaton, p. 337.)
This case has been noticed.

That in 5 Weaton (*Houston vs. Moore*) decided that the Act of the State of Pennsylvania providing for the trial by a *State Court Martial*, of certain military offences, was not repugnant to the Constitution and laws of the United States. No other question was raised or determined, but the learned Justice, who dissented from the opinion of the Court, mentions the exclusiveness of admiralty jurisdiction, incidentally, by way of argument, as an example of the third class, *citing* Martin vs. Hunter, 1 Weaton, 304, in which the opinion was delivered by himself, and in which he says: "It is manifest that the judicial power of the United States "is unavoidably, in some cases, exclusive of all State author- "ity; *and in all others may be made so at the election of* "*Congress.* * * * * "The admiralty and "maritime jurisdiction is of the same exclusive cognizance; "*and it can only be in those cases, where previous to the Consti-* "*tution, State tribunals possessed jurisdiction independent of* "*National authority, that they can now constitutionally exercise* "*concurrent jurisdiction.*"

Misled by this case, Chancellor Kent expressed the opinion in his commentaries, that "whatever admiralty and "maritime jurisdiction the District Courts possess, would "seem to be *exclusive.*" His attention thus aroused, Mr. Justice Story noticed the "mistake," as he terms it, in a note to Sec. 1672 of his commentaries on the Constitution. He there repudiates entirely the discretionary power of Congress, as well as the exclusive jurisdiction of the admiralty, and says: "there is nothing in the Constitution necessarily

" leading to the conclusion that the jurisdiction was intended " to be exclusive, and there is as little ground upon general " reason, to contend for it." Mr. Chancellor Kent, in acknowledging the correction, charged his error upon Mr. Justice Story himself, or rather upon the case of Martin vs. Hunter, as above stated, and concludes by saying :

" But we are taught by the note in the commentaries " referred to, that the State Courts have all the concurrent " cognizance which they had originally, in 1787, over mar- " itime contracts, and that this concurrent jurisdiction does " not depend, as declared in 1 Wheaton, 337, on the pleasure " of Congress, but is founded on the 'reasonable interpreta- " 'tion of the Constitution.'" (1 Kent 377, note c, 9th Ed. marginal, *paging.)*

Again, we are taught by the Federalist, *Nos.* 81 and 82, that the grant of jurisdiction to the Federal Courts was not intended to be exclusive ; and at all events that " the State " Court would be divested of no part of their primitive " jurisdiction, further than may relate to an appeal."

It may, therefore, be considered as established—

1. That the grant of admiralty and maritime jurisdiction in the Constitution, is not exclusive in its terms.

2. That it is not prohibited to the State Courts.

3. If intended to be exclusive, such intention must be found in some repugnancy or incompatibility in the exercise of like powers by the State tribunals.

4. If not intended to be exclusive, Congress cannot make it so, if the result would be to divest the State Courts of any part of their primitive jurisdiction.

A singular fatality has always attended the judicial discussion of this question. Some of the State Courts, not content with the powers actually reserved to them, but repudiating the supremacy of the Constitution and laws of the Union, have denied the appellate jurisdiction of the Supreme Court of the United States over the State tribunals. Placing themselves clearly in the wrong in this respect, the argument, as well as the authority, has been against them ; and the Federal Judges—some of them—carried away by

the heat of the controversy, and not sufficiently mindful of the question at issue, have furnished us with a general summary of the relative powers and jurisdiction of the State and Federal Courts.

Foremost stands Mr. Justice Story, who, conscious of superior learning, too often disdained to confine his investigations to the questions presented; but introduced into his written opinions, admirable disquisitions upon many other questions of importance suggested by the matters presented for adjudication. In this manner we have been furnished with some excellent treatises upon constitutional law, including the extent and exclusiveness of the admiralty jurisdiction of the Federal Courts (where the points discussed were not involved at all), which he has contrived to weave into his truly valuable commentaries on the Constitution, citing those very cases as authorities! An examination of the cases of De Lovio vs. Boit, 2 Gallison 398, and Martin vs. Hunter, 1 Wheaton 304, and the uses he has made of them in his commentaries, is sufficient to justify this criticism.

Again, upon this question of admiralty cognizance, the contest has always been among the Federal Judges themselves.

The voice of the State Courts has seldom been heard; and whenever heard, owing to the peculiar nature of our judicial system, that voice is powerless. In England, the law courts could issue their writs of prohibition. But here, the Federal Courts are independent in their sphere. Left free to define and establish the bounds of their own jurisdiction, that of the Admiralty Courts has been extended far beyond its acknowledged limits at the time of the adoption of the Constitution. But in all the cases that have hitherto arisen, the question has *never* been whether it was *exclusively* vested in the Federal Courts, but whether it extended to a particular case. And the contest among the Federal Judges has always been confined to the question of its extent, but unfortunately those who claimed for the admiralty courts an enlarged jurisdiction, have not hesitated to assert its

exclusiveness also. And so between the language of the Judiciary Act and the *dicta* of courts and judges, the Constitution has come to be nearly overlooked; and the Judicial Act is seemingly regarded, if not as the fountain head of the Federal jurisdiction, at least as a kind of supplemental grant. Is it not time to return to fundamental principles and bring to bear upon this question the light of sound reason and patient judicial investigation?

In the language of the Federalist, quoted approvingly by Mr. Justice Story *(Com. on the Con. sec.* 1753*)*, "this doctrine "of concurrent jurisdiction *is only clearly applicable* to those "descriptions of causes of which the State Courts had previ- "ous cognizance. It is not equally evident in relation to "cases which may grow out of or be peculiar to the Con- "stitution to be established, for not to allow the State Courts "a right of jurisdiction in such cases, can hardly be consid- "ered as the abridgement of a pre-existing authority."

Now it is well known that at the time of the adoption of the Constitution, whatever admiralty jurisdiction existed in this country, was exercised by the State Courts, with the exception of piracies and felonies on the high seas and *appeals* in cases of capture. Before the revolution each colony had its court of admiralty. During the revolution and up to the adoption of the Constitution, this jurisdiction was vested in and exercised by the States respectively, subject to the power of Congress as contained in article 9, section 1, of Articles of Confederation, to establish courts for receiving and determining finally *appeals* in all cases of captures, and courts for the trial of piracies and felonies committed on the high seas.

At that time then "admiralty and maritime cases" as clearly belonged to the State Courts as those of chancery and common law.

They belonged to the State Courts independent of Articles of Confederation, and did not in any manner "grow out of" the Constitution itself. When therefore by the provisions of that instrument, cognizance of such cases was granted to the Federal Courts without *words* of exclusion, the

principle of exclusion must be found, if found at all, in the incompatibility of the exercise of like powers concurrently by the State and Federal Courts. If not found there, it is not contained in the Constitution. And what the Constitution permits in this regard, either expressly or by implication and reasonable inference, Congress cannot prohibit.

Now let us examine this question of incompatibility. The rule, as stated by Storey, is this: "The power is exclusive in the National Government where an authority is "granted to the Union, to which a similar authority in the "States would be absolutely and totally contradictory and "repugnant." *(Story on the Con. sec.* 437.*)*

"The principal difficulty lies not so much in the rule, "as in its application to particular cases * * * "But unless from the nature of the power, or from the obvious results of its operations, a repugnancy *must* exist, so "as to lead to a *necessary* conclusion, that the power was "intended to be exclusive. The true rule of interpretation "is that the power is merely concurrent." *(Ibid. sec.* 438.*)*

This repugnancy therefore may exist either in the *nature* of the power, or its practical operations. That conflicts may arise in the exercise of *acknowledged* concurrent powers is conceded. *(Ibid. sec.* 439.*)*

In such cases the Constitution provides the remedy in the declared supremacy of the Constitution and laws of the Union, and the supervisory control of the Supreme Court. In the exercise of concurrent *judicial* powers, courts have also adopted a rule of judicial comity eminently calculated to prevent such conflicts. It is, that the court which first obtains possession or custody of the thing by attachment or proceeding *in rem*, shall retain it. (The Robert Fulton, 1 Paine C. C. R. 626). This was a case of admiralty cognizance. And the libel was dismissed because an attachment under the Boat and Vessel Act of the State, had previously been levied on the vessel, and she was in the custody of the sheriff when the libel was filed.

The following are given as samples of concurrent powers: The power to lay taxes (Story on the Constitu-

tion, sec. 438), though expressly given to Congress. So Congress has the power to lay and collect duties, imposts and excises which "shall be uniform throughout the Uni- "ted States." (Const. art. 1, sec. 8) But the license laws of Massachusetts, Rhode Island and New Hampshire forbidding the sale of spirituous liquors, in less than certain large quantities, were held not to be repugnant to this clause, nor that regulating commerce. (The license cases, 5 How. 504–577.)

So the States are not deprived of the power of regulating pilots, when such regulation does not interfere with the acts of Congress. So the *power* granted to Congress to establish uniform laws on the subject of bankruptcies does not deprive the States of the power to pass bankrupt laws. (Story on Const. sec. 423 and cases cited.) So offences against the military laws of the United States by persons called into the service of the United States, may be tried by State Courts Martial, where the act of Congress does not *expressly* vest exclusive jurisdiction in the courts martial thereby authorized. (Houston vs Moore, 5 Wheaton 1.)

Though the courses of reasoning persued by the members of the Court in that case in arriving at the same conclusion, were various, the case established the point that there was no necessary repugnancy or incompatibility either in the nature of the power or in its exercise. Mr. Justice Story thought there was, and dissented on that ground.

So the State Courts have unquestioned concurrent cognizance of nearly all the cases mentioned in sec. 2, art. 3.

Cases affecting ambassadors, etc., are of exclusive Federal cognizance, and *rightfully*, because they *grow out of the Constitution itself*. Most of the other enumerated cases do not, and are, therefore, properly left by the Judiciary Act where the Constitution left them—to the cognizance of the State and Federal Courts concurrently. It is not easy to conceive what practical difficulties could arise in the exercise of concurrent admiralty powers, greater than have occurred in other cases and been surmounted.

In fact, the key to the whole difficulty lies in the *claim* on the part of the District Courts of exclusive jurisdiction. Let that *claim* be abandoned, let it be settled that the jurisdiction is concurrent, and that the Constitution gives to this Court ample appellate control over the State Courts, and the great bug-bear of incompatibility will never again be heard of. For if such appellate jurisdiction is granted in the Constitution, it is given as fully over the State Courts, as over the Federal Courts; and though Congress, in the exercise of its discretionary powers, has neglected to carry the grant into effect, this was owing to a mistaken view of the Constitution, and the extent of the concurrent powers of the State tribunals under it. But such neglect, so far from being made an argument in support of the principle of exclusion, affords the strongest possible reason why the mistake should be pointed out by the Court, to the end that it may be remedied by proper legislation.

That there is no repugnancy in the nature of the power, may be inferred from what we are taught concerning the nature of judicial power in general.

In Delafield vs. Illinois (2 Hill, 164, 165), Mr. Justice Bronson holds this language: "There is nothing in the "nature of jurisdiction, as applied to Courts, which renders "it exclusive. It is not like a grant of property, which can "not have several owners at the same time. It is matter of "common experience that two or more Courts may have "concurrent powers over the same parties, and the same "subject matter. Jurisdiction is not a right or privilege "belonging to the judge; but an authority or power to do "justice in a given case, when it is brought before him. "There is, I think, no instance in the whole history of the "law, where the mere grant of jurisdiction to a particular "Court, without any words of exclusion, has been held to "oust any other Court of the power which it before posses-"sed." Mr. Justice Washington comes to the same conclusion in Houston vs. Moore (5 Weaton, 29–30), and applies the doctrine to a case growing out of the military laws of the

United States where danger from a conflict of authority might be apprehended, if at all.

The attention of the Court is particularly invited to the opinion of Mr. Justice Bronson, in the case cited above. His attention was not called to the particular question now under discussion, but his reasoning upon the construction of the Constitutional grant of judicial power is pertinent, able and satisfactory.

And that there is nothing in the nature of admiralty law which necessarily confines its administration to particular Courts, is further evident from the fact that in England it was formerly administered concurrently by the Court of Chancery, and that of Admiralty, and that a large portion thereof is still administered in the Court of Exchequer.

Spencer Eq. Juris, Vol. 1, p. 703.
Benedict's Admiralty, Sec. 42.

III.

To sustain the third proposition, we cite the cases under the second head, declaring and conceding the validity of these local laws. Also, Cashmere vs. De Wolf, 2 Sandf. Sup. C. R. (N. Y.) 379. Percival vs. Hickey, 18 Johns. 291. Blake vs. Patton, 15 Maine, 173.

The Judiciary Act has generally been understood as reserving to the States all the concurrent cognizance of admiralty and maritime cases, theretofore exercised by the courts of common law.

The District Judge of Missouri, in Ashbrook vs. The Golden Gate, however, holds that only common law remedies, *strictly* so called, such as "actions of debt, assumpsit case, "trespass, trover, etc., as known and practiced at the com-"mon law," are intended.

He expressly excludes a bill in equity, and his reasoning would exclude altogether the jurisdiction of the State Courts in those States (as California and New York), where all common law remedies have been expressly abolished. This doctrine is directly opposed to the language of this

Court, as expressed by Mr. Justice Wayne, in 5 How. 461, and to that of Mr. Justice Story, in *note* to sec. 1672 of his Commentaries on the Constitution, where he interprets the Judiciary Act and the Constitution together to confer the admiralty jurisdiction on the National Judiciary with the same, and no further exclusiveness than attached to it at common law, and that cases which were formerly of *concurrent* cognizance, "could no more be deemed cases of admi-"ralty and maritime jurisdiction, than cases of common law "jurisdiction."

That the contract and breaches in this case are of common law cognizance, cannot be questioned. Does the State Court lose jurisdiction by attempting to proceed *in rem?*

Mr. Justice Story, after conceding to the States concurrent jurisdiction in all cases of former concurrent cognizance says, "they cannot create Courts of Admiralty as "such" (*ibidem.*)

If this be conceded, what follows? Does it follow that a court which has power conferred on it in certain cases to proceed against a vessel by name, thereby becomes a Court of Admiralty?

Or, that a suit against a vessel by name is substantially a suit in admiralty?

The jurisdiction of a Court of Admiralty is not attempted to be conferred on the State Courts. The Act specifies but six classes of cases, all within the acknowledged jurisdiction of the State Courts, and *excludes* many cases of concurrent cognizance, and all cases of *exclusive* admiralty cognizance. The practice in admiralty has no application to these proceedings (18 Cal. 526). The nature of a court depends on its *jurisdiction*, not on its method of procedure. In California the District Courts are invested with common law and equity powers, and administer them both in one form of proceeding. All distinction between the forms of civil remedies is abolished in that State.

"The question, whether any particular court has jurisdiction, is totally different from any question of the manner

in which the court shall proceed" (5 How. 459. Benedict's Admiralty, sec. 197–201–204).

"The distinction between proceedings *in rem* and *in* "*personam*, has no proper relation to the question of jurisdic- "tion. The *substratum* of the action is the liability of one "party to respond to the other, and the court may enforce "it against the person, or against a particular portion of his "property, or against his property generally, as the law "may have provided the right.

"If the cause is a maritime cause, subject to admiralty "cognizance, jurisdiction is complete over the person as "as well as over the ship. It must, in its nature, be com- "plete—*for it cannot be confined to one of the remedies on the* "*contract, when the contract itself is within its cognizance.*"

Ben. Adm. sec. 204, and cases there cited.

This doctrine applies with equal force to sustain the present case. A Court of Admiralty, when administering justice *in personam*, with the intervention of a jury, does not thereby lose its jurisdiction nor become, *quoad hoc*, a court of common law. By the same rule a court of common law does not become a court of admiralty merely by adopting some of its forms. It is the *jurisdiction*, not the *forms*, which characterizes the Court. To hold the jurisdiction ousted in cases of *concurrent* cognizance, by adopting an admiralty form of proceeding, is tantamount to a denial of the right to adopt such remedy in cases *not* of admiralty cognizance. If jurisdiction depends upon the remedy in the one case, it does in the other; for a case of *concurrent* cognizance, when brought within the jurisdiction of a court of common law, is just as fully and completly within its jurisdiction and subject to its control as one of the other class.

This doctrine would either deprive parties of their legal rights in certain cases, or compel this court again to modify the 12th rule in admiralty, so as to enable the District Courts to enforce the liens of material-men and others, given by local laws, by proceedings *in rem*.

The inference is, that when a case of concurrent cogni-

zance is brought in either court, that court has power to administer complete justice between the parties according to its own method of procedure ; that the court of law does not watch its neighbor of the admiralty to snatch away the case as soon as a jury is empanneled, and that a court of admiralty is no more vigilant to assert its jurisdiction the moment a proceeding *in rem* is adopted.

In conclusion, we respectfully solicit the attention of the Court to the rapid extension, in this country, of the admiralty jurisdiction. At first it was conceded to be confined to tide waters, and it was a question whether it extended within the body of a county. That point settled in the affirmative, it was subsequently held that the jurisdiction was not ousted by the commencement or termination of the voyage being *beyond* tide waters. (6 How. 392. On the other hand, it was held that the voyage must be *substantially* on tide waters, and the mere fact of the *terminus* being within or beyond the ebb or flow of the sea made no difference. (11 Peters, 175 ; 10 Wheat. 428 ; 7 Peters, 324.) But in 1845, Congress passed an act purporting to extend the admiralty jurisdiction over the inland lakes and navigable rivers. The passage of this act seems to have awakened new ideas in the judicial mind ; for, only six years afterwards, this Court affirmed its constitutionality, with only one dissenting voice (12 How. 443.) But, in order to accept on behalf of the District Courts, the jurisdiction thus offered, it became necessary to decline it at the hands of Congress, and to found it upon the Constitution. For this purpose the previous decisions of the Court were reviewed and overruled, and the admiralty and maritime jurisdiction granted in the Constitution, was defined, *ex vi termini*, to extend over those waters.

To the jurisdiction thus established there can be little objection, so long as it is not made exclusive. In view, however, of the great number and extent of our navigable rivers ; the amount of commerce on them ; the long-established practice in the several States of exercising a sort of admiralty jurisdiction under local laws ; by proceedings *in*

rem against vessels navigating these waters; the entirely satisfactory manner in which those laws have hitherto been administered, and the entire absence of any necessity—apparent from the practical workings of the present system—that it should be changed: this Court may well hesitate to declare the jurisdiction of the District Courts over those waters to be *exclusive*. The result would be to uproot and demolish much of the legislation of half the States, to change rights of property long since acquired, and confuse and derange instead of harmonizing the practice under our complex system of courts; and all for an idea—the delusive idea of repugnancy and incompatibility shown by the judicial history of the past half century to have no foundation in actual experience. This would be the *effect* of the principle sought to be established by the counsel for the plaintiff in error. Though he goes further, and asks not only that the jurisdiction of the District Courts in admiralty be declared *exclusive*, but that it be still further extended, and thus made *exclusive* over the Isthmus of Panama and all other transit routes between the two oceans.

All of which is respectfully submitted,

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